United Nations E/1999/124

Economic and Social Council

Distr.: General
15 December 1999

Original: English

Resumed substantive session of 1999
16 December 1999
Agenda item 14 (h)
Social and human rights questions: human rights

Letter dated 15 December 1999 from the Secretary-General to the President of the Economic and Social Council

Further to my letter to you of 19 October 1999 (E/1999/121) concerning implementation of the advisory opinion of the International Court of Justice (ICJ) of 29 April 1999 on the difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights (see E/1999/49). I have the honour to refer to the legal expenses incurred by Dato' Param Cumaraswamy, the United Nations Commission on Human Rights Special Rapporteur on the independence of judges and lawyers, in connection with civil proceedings against him in the Malaysian civil courts.

As the United Nations has maintained that Dato' Param Cumaraswamy was acting within the course of the performance of his mission when he spoke the words giving rise to the subject proceedings, the United Nations is obliged to indemnify him for any costs, expenses or damages arising out of those proceedings. The United Nations has also maintained the position that the Government of Malaysia is ultimately responsible for those costs, expenses or damages. In its advisory opinion of 29 April 1999, the International Court of Justice confirmed the foregoing. The Court upheld the Secretary-General's assertion of Dato' Param Cumaraswamy's immunity from legal process and that he was acting in the course of the performance of his mission for the United Nations. The Court also found, in commenting on the obligations of Malaysia, that he must be held financially harmless from any costs imposed by the Malaysian courts, in particular taxed costs. It is our considered view that the costs imposed by the Malaysian courts within the meaning of the ICJ advisory opinion include all legal expenses imposed on Dato' Param Cumaraswamy by virtue of the court orders and proceedings in the Malaysian courts.

The United Nations has therefore submitted a claim for reimbursement to the Government of Malaysia for the legal expenses it has paid on behalf of Dato' Param Cumaraswamy in connection with the proceedings in the four lawsuits. These expenses have been accumulating since January 1997 and currently amount to US$ 110,886.91 (420,000 ringgit).

99-39193 (E) 151299

As proceedings in the four lawsuits have continued despite the Government of Malaysia's obligations under the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)), the ICJ advisory opinion and Economic and Social Council resolution 1999/64 of 30 July 1999, Dato' Param Cumaraswamy's legal expenses will also continue to accumulate. Therefore, the Government's intervention, by issuing a certificate to give effect to Dato' Param Cumaraswamy's immunity from legal process, as upheld and required by the Convention, the ICJ advisory opinion and Council resolution 1999/64 and as stipulated under Malaysian law, will avoid further financial burden on the United Nations and, ultimately, the Government of Malaysia.

(*Signed*) Kofi A. **Annan**